U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-W-L-

DATE: NOV. 9, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a classical viola musician, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner provides new evidence, as well as previously submitted documentation, and a brief, stating that she meets at least three criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a classical viola musician employed as a faculty violist for the [redacted] Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner maintains that she meets three criteria: memberships under 8 C.F.R. § 204.5(h)(3)(ii), judging under 8 C.F.R. § 204.5(h)(3)(iv), and leading or critical roles under § 204.5(h)(3)(viii).[1] We have reviewed all of the evidence in the record, and conclude it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

[1] While the Petitioner previously claimed eligibility for the criteria pertaining to awards under 8 C.F.R. § 204.5(h)(3)(i) and published material under 8 C.F.R. § 204.5(h)(3)(iii), she does not continue to do so on appeal, nor does the record support a determination that she meets them. Accordingly, we will not further address these criteria in our decision. In addition, although the Petitioner does not contest the Director's decision relating to the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii), we find, as discussed later in this decision, that the record includes sufficient documentation to establish that she satisfies it.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner argues that she meets this criterion based on her membership with [redacted] As evidence of her membership, she provided a letter from [redacted] secretary for the local chapter of [redacted] congratulating the Petitioner for being "nominated" and indicating he "sincerely hope[s] that [she] will accept this invitation." As the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "the alien's membership in associations," the Petitioner's submission of documentary evidence inviting or encouraging her to become a member is insufficient to demonstrate that she is a member.

Even if the Petitioner demonstrated actual membership, the issue for this criterion is not the reputation or standing of the association but whether outstanding achievements, as judged by recognized national or international experts, are required for membership. The Petitioner submits a letter from [redacted] president of the local chapter for [redacted] which was written for another [redacted] member who had applied for extraordinary ability classification.[2] [redacted] states that "[m]embership in the [redacted] is based on outstanding achievements in the field of music as judged by the esteemed experts on the Faculty Committee alone." Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Although [redacted] discusses why this individual was granted membership, he did not show the [redacted] requires outstanding achievements as an essential condition for membership.

In addition, the Petitioner offered screenshots from [redacted] website and copies of [redacted] constitution and by-laws showing that membership into [redacted] is open to junior, senior, and graduate students majoring in music based on their grade point average or class rank, as well as to music faculty members. Such requirements, however, do not represent a level consistent with outstanding achievements. The [redacted] national constitution states under the membership section that a junior or graduating senior is eligible if the faculty committee considers the student to be "outstanding in scholarly achievement and musicianship," provided the student has the required grade point average. However, the national constitution does not define these criteria or explain in any detail how the faculty committee will determine if a student is outstanding in scholarly achievement and musicianship.

Further, the constitution states that the faculty committee will make membership nominations. The committee consists of music faculty who are members of [redacted] The Petitioner, however, did not demonstrate that the committee is comprised of recognized national or international experts. As

[2] The record does not indicate whether the noted individual was approved for such classification. Regardless, we note we are not bound by decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

stated in the letter mentioned above by [redacted] the membership decisions are made by the faculty committee who are [redacted] members who are selected within the local chapter. [redacted] claims that each individual of the faculty committee has "already established her/himself as an expert in the field of music through the rigorous nomination and election process themselves." However, he does not provide a basis for stating that the members of the faculty committee are nationally or internationally recognized, outside of being members themselves in [redacted] For these reasons, the Petitioner does not meet this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

In response to the Director's request for evidence (RFE), the Petitioner argued that she met this criterion by serving as a judge for incoming student auditions for the [redacted] at [redacted] A letter from [redacted] the Director of [redacted] at [redacted] indicated that the Petitioner evaluated incoming student auditions for the string program in February 2016. The author also stated that she served in the adjudication panel because of her expertise in viola and as a faculty member. In the Director's decision, he stated that the evidence related to events occurring, over a year after the current petition was filed, and therefore does not show eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

On appeal, the Petitioner asserts that [redacted] wrote about the last time she was involved in the adjudication panel, but that she also served on the panel before filing the petition. [redacted] submits an updated letter to "clarify my first confirmation letter" and states that the Petitioner was "hired as a faculty violist at the beginning of 2014, and as the faculty violist she was charged with auditioning the candidates for the [redacted] at the [redacted] . . . Thus, she served on the adjudication panel along with the faculty cellist and faculty violinist in February of 2014 and 2015." In the updated letter, the author does not explain the inconsistency in the noted dates nor does he indicate, as the Petitioner asserts, that the previous letter only reflected the most recent date she participated in a panel. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner did not provide any corroborating evidence establishing that she served on a panel prior to filing the petition to support the new letter. Moreover, the letters from [redacted] did not explain the panel's adjudication process, or the Petitioner's duties or responsibilities in the process, to demonstrate that she served as a judge of the work of others consistent with the plain language of the criterion.

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." Serving as an instructor in a classroom setting and evaluating students in an informal capacity as part of one's job duties does not equate to participation as a judge of the work of others in the field. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually, as specified by the regulatory

criterion. Without supporting evidence showing that she participated as a judge prior to filing the petition, the Petitioner has not established that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The record contains playbills and other evidence of the Petitioner's performances with several orchestras and symphonies, such as the [redacted] the [redacted] and the [redacted] Accordingly, we find the Petitioner satisfies this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner contends that she meets this criterion based on her work with [redacted] the [redacted] and [redacted] In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment.

The record contains a letter from [redacted] president and owner of [redacted] who stated that the Petitioner "performed in a leading role for our organization on many occasions." [redacted] explained that his organization writes and records compositions for cinema. He further stated that she has performed as the sole violist, section leader, and workshop musician, and that she has recorded compositions used in high profile films. [redacted] however, did not demonstrate how the Petitioner's contributions and accomplishments served as a leading role to [redacted] overall. In addition, [redacted] did not provide information regarding the organizational hierarchy to understand the role of the Petitioner within the company, and show how her role compared to the other positions within [redacted] such as [redacted] roles as president and owner, to demonstrate that it is a leading one.

[redacted] also claimed that the Petitioner is "critical to the success of our organization and has held a critical position as a soloist, section leader, and workshop musician." He did not, however, explain how the Petitioner influenced [redacted] overall reputation or status, and did not show how she was responsible for the success of the organization. For example, the letter does not indicate how often she worked in these positions or how her work contributed to the success or influenced the standing of [redacted] in the field. Accordingly, he did not provide sufficient information to meet this criterion. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5.

As noted above, the Petitioner also claimed that she served in a leading and critical role based on her position as a principal violist, section leader, and soloist for [redacted] and [redacted] The record contains several playbills for performances that list the Petitioner as a viola player but they do not indicate she is a principal or serves in a leading or critical role for [redacted] She also submitted a

playbill for one performance with the [redacted] where she is listed as a co-principal. Although the Petitioner performed at these events, during most of them she was not a principal or in a leading role. She did not demonstrate that her one-time performance as a co-principal constitutes a leading or critical role for [redacted] The Petitioner, for example, did not show how her role compared to the other positions within [redacted] or [redacted] to demonstrate that it is leading or how her role led to the success or standing of these orchestras to establish that it is critical.

In addition, the regulation requires that the Petitioner has performed for organizations or establishments "that have a distinguished reputation." The Petitioner presented a letter from the owner of [redacted] stating it is one of the "most successful composition groups in [redacted] and [redacted]" and provided a list of past projects. However, the Petitioner did not provide any corroborating evidence from other sources to corroborate this statement or otherwise show [redacted] distinguished reputation. As it pertains to [redacted] and [redacted] the Petitioner provided screenshots from the websites for [redacted] and [redacted] Although the documentation provides insight on what these two companies do, it does not indicate that [redacted] or [redacted] have eminent reputations, such as by garnering major awards or receiving favorable media coverage. For the reasons discussed above, the Petitioner did not demonstrate that she meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of E-W-L-*, ID# 762244 (AAO Nov. 9, 2017)